IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4398 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MANILAL SHIVLAL

Versus

STATE OF GUJARAT

Appearance:

MR MI HAVA for Petitioners

Mr. K.K.Trivedi, advocate for petitioner nos. 2 and 3

Mr. S.T.Mehta, ASSTT. GOVERNMENT PLEADER for the Respondent

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 31/08/98

ORAL JUDGEMENT

By means of this petition, the petitioner

has sought for quashing the order dated 6.6.92 of the State Government at Annexure "B", passed under section 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act). The following items of the property of the petitioner have been considered under Section 6(1) of the Act.

Surat city
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(1) Surveyno. 3/4806/A
(2) Survey no. 3098/A
(3) Survey no. 3096/A
(4) Survey no. 4413

Total ... 10069 sq.mtrs.

2. Property in Surat city.

(1) Survey no. 3/2322 140 sq.mtrs.
(2) Survey no. 3/2323-176 sq.mtrs.

3. Property of village Piplod-survey no. 84, admeasuring 2428 sq.mtrs.
4. Property in village Piplod bearing survey no. 69/2-admeasuring 5058 sq.mtrs.

2. The petitioner's case before the Competent Authority regarding item nos. (i) and (ii) was that the property was fully constructed for residential and commercial purpose. Regarding item no. 3 of the property, wife of the petitioner executed a Will in favour of three daughters and regarding property no. 4, it was said that it was an agricultural land and it was sold in 1975 after obtaining necessary permission from the competent authority. By its order date 24.3.86, the Competent Authority held that item nos.1 and 2 of the property in Surat city were residential properties and they were partitioned by three equal shares of three daughters on the basis of the Will. The property shown at item no. 2 was a constructed property used for residential purpose which is eligible to be calculated to be retained by the petitioner. Regarding property shown at serial no.3, the competent authority held that three daughters had equal shares 604 sq.mtrs. each which is eligible to be calculated as retainable by the petitioner. So far as the property shown at item nos. 4 is concerned, three daughters have equal shares and that comes to 1264 sq.mtrs. which was within the ceiling limits and that property was sold to one Maganbhai Dayalbhai and Keshabhai Limbabhai by a registered sale

deed dated 26th May, 1976 after obtaining necessary permission of the Collector, Surat. Thus, the petitioner was not holding any excess land. The Government exercising powers under Section 34 of the Act, held that the petitioner was holding 7296.36 sq.mtrs. of land as excess land. The Competent Authority and Additional Collector, Surat was directed to take further action for taking possession of the excess land. While exercising the powers under Section 34 of the Act, the Government considered the written statement and additional written statement filed in reply to the show cause notice dated 18.6.90 and it is stated that the notice was issued after inordinate delay of 4 years and 3 months. The competent authority passed the order on 24.3.86 and the show cause notice was issued on 18.6.90 i.e. after about four years. In the meantime, interest of third party had accrued. Having regard to the ratio laid down in the case of Vasantlal Chhotalal vs. State of Gujarat reported in 1984 Gujarat Law Herald, 775, Review is unwarranted. (ii) The order passed by the competent authority was just, proper and legal and based on the evidence on record and that order cannot be reviewed after a period of four years. (iii) The computation made by the Government is erroneous. The property shown at sr.no. 3 was absolutely holding of Nirmalaben, wife of the petitioner. The property was acquired by her from her father after permission was obtained for non-agricultural land under the Will of Nirmalaben and her three daughters. As such each of them acquired only 809.36 sq.mtrs. (iv) Pravinaben sold the land by a registered sale deed dated 10.6.88 her share to M/s. Grover Udyog, a partnership firm and the same was entered in entry no. 769 of village form no.VI on 7.10.88 and that was certified by Mamlatdar. Madhukantaben and Niranjanaben also sold their share by sale deeds dated 10.6.88 to S. M Hotels Pvt.Ltd. and J. S. M. Hotels Pvt.Ltd. Entry nos. 767 and 768 were made in village form nos. VI on 7.10.88 and those entries were certified by the Mamlatdar on 7.12.88 of village Piplod. (6) The property of village Piplod shown at sr. no.3 was not held by the petitioner as it was the property of his wife and that property was not the property of the family and that property had already been sold after obtaining non-agricultural permission by registered sale deed in favour of the third parties. The petitioner also filed an additional written statement raised points as under:

(1) In the property of survey no. 69/2 of village Rundh, the petitioner had half share and the holder of the property has already sold 5058 sq.mtrs. to Maganbhai Dahyabhai and Keshabhai Limbabhai by a registered sale

deed dated 26.5.75 after obtaining necessary permission from the competent court. The competent authority passed an order holding that there was no excess vacant land. The holder also made an application to Surat Urban Development Authority for obtaining certificate to show that about 800 sq.mtrs. of land was acquired for highway from survey no. 84 of village Piplod and that certificate has not been received. Thus, the petitioner has no excess vacant land under the Ceiling Act.

3. The Government considered the written statement filed on behalf of the petitioner and came to the conclusion that regarding property of Surat city no. 3/3806/A, 3/3098A, 3/3096A and survey no. 3/4413. As stated above, the petitioner has not filed any objection as he was admittedly holding that property. So far as the property shown at sr.nos. 2 bearing nos. 3/2322 and 3/2323, the land holder has made no submission regarding averments also and that issue was admitted by him.

4. As regards property shown at sr. no. as item no. 3 of village Piplod, it was stated that the property was held by his wife and therefore, it was not to be computed in his holding, but according to the provisions of Section 2(f) of the Act, a separate unit is not retainable by a wife. Therefore, it is eligible to be computed in holding of the husband. Regarding land, scheme under Section 21 was withdrawn and the land was lying vacant. There was a share of Nirmalaben alongwith her three daughters in the land in question. But during the lifetime of father, separate share is not retainable by daughters and as the property of wife is computable in the holding of husband, the will by which the share is given to daughters and the entries made in respect thereof on 16.1.85 which is after the appointed day. Hence, the property will be deemed to be property of father and it is not eligible to be separately retainable. Therefore, full holding of 2428 sq.mtrs. of the land of the holder is eligible to be computed. So far as the land shown at sr. no. 4 property at village Rundh which was admeasuring 10177 sq.mtrs., the petitioner had half share to the extent of 5058 sq.mtrs. which is eligible to be computed in the holding of the petitioner. The property nos.1 to 4 was admeasuring 8796.36 sq.mtrs.and the petitioner was entitled to retain 1500 sq.mtrs. of land. The remaining 7296.36 sq.mtrs. of the petitioner was declared as excess vacant land by the order dated 6.6.92.

7. The learned counsel for the petitioner has mainly raised the following three contentions.

1. The order of the Government has been passed after lapse of about four years. Hence, inordinate delay in exercise of power under Section 34 of the Act by the impugned order is unreasonable and bad in law and for this purpose he relied on the following two cases.

(i) Judgment of the Division Bench in the case of Jayantilal K Shah vs. State of Gujarat and others, reported in 1995(1) GLR, 592.

(ii) M/s. Kavita Benefit Pvt.Ltd. vs. Joint. Secretary, Revenue Department and another reported in 1994 (1) GLR, 649 wherein it is held that the revisional power under section 34 of the Act is to be exercised in reasonable manner and within reasonable time. This Court laid down seven guidelines as under:

(i) A large number of officers working asCompetent Authority all throughout the State exercise power under section 9 at different points oftime and large number of orders are passed day in and dayout. As against large number of officers who pass the orders andlarge number of orders which are passed, the revisional authorityis one, namely, the State Government, or responsible officers of the State Government and therefore, exercise of revisional power shouldnot be curtailed to a unreasonablyshort period. Some concessions for a large period would have to be made in favour of State Government.

(ii) It would be advisable for the State Government to issue general instructions to all Competent Authorities to send their orders within stipulated period to the State Government so that the State Government can decide as to whether the orders passed by various Competent Authorities with respect to various parcels of land wre required to be revised ornot. If suchorders are directed to be sent to the State Government within period of three months from the date the orders are passed, period of one year from the date of receipt thereof by the State Government would be a reasonable period within which revisional power can be exercised by the State Government.

(iii) In a given case, the State Government may justify

invocation of revisional power even beyond period of one year from the date of the receipt of the order of Competent Authority, if the facts and circumstancxes demand such revisional exercise of power even beyond said period.

(iv) In cases where the order of the Competent Authority is in favour of the holder of land and the same is operasted for a period of about 15 to 18 months, the holder of the land is justified in assuming that the order of the Competent Authority holds the field, and is also further justified in dealing with his/her properties on the supposition that the order of the Competent Authority has become final.

(v) Hemay either himself develop the property and put the property for his own use or he may transfer or alienate the same to third parties. The third parties as bona fide purchasers maymake necessary enquiries and such enquiries would reveal thast the Competent Authority has by a final order found thast the land was not held in excess anbd that the holder of the land was holding land within permissiblelimits. On such enquiry a bonafide purchaser would be emboldened and justified to purchase the said land for his own use or for putting up construction thereon. When the third parties come in the picture and acquire right, title and interest in the parcels of land based on the order passed by the Competent Authority, exercise of revisional powre after expiry of unreasonablylong period would, not only affect the holder of the land but would advrsely affect the third parties who have purchased such parcel of land from theholder of the land.

(vi) It is also not advisable to keep the right, title and interest of the holder of the land in abeyance or under suspension for indefinitely long period. If he is entitled to hold the land he should be pedrmitted to deal with the land in the manner he likes and his right and title over the land cannot be kept under eclipse for all time to come because the State Government may think to exdercise its revisional power at any point of time.

(vii) However, when the holder of the land has not changed his position or has not acted to his detriment and the properties remained in the same

condition in which they were on the date on which the Competent Authority passed the order, even late exdercise of power bythe revisional authority cannot be invalidated especially when the holder ofland is otchanged. Even in such a case it would be necessaryfor the State Government to satisfy the Court as to why it did not exercise its revisional power within reasonable period. On proper explanation being given by the State Government exercise of revisional power even after lapse of long period may be accepted in a given case.

8. I have considered the submissions made on behalf of the petitioner in respect of the delay in exercising revisional jurisdiction under Section 34 of the Act. The Legislature has not prescribed any time limit for exercising such power under Section 34 of the Act. The object of the Legislature in not prescribing any limitation of time is that there may be various reasons i.e. collusion, fraud of theparties, arbitrariness, negligence of the authority in passing the order. As soon as the State Government comes to know that some illegal order has been passed by the prescribed authority, erroneously in not declaring excess land, the State Government could be able to pass correct orders for exercising revisional powers suo motu under Section 34 of the Act at any time. It is not a lacunae to be filled in by the Court to circumvent it by reasonable time which may be several years.

9. The Division Bench of this Court in the case of Haresh Kantilal Vora vs. Competent Authority and Additional Collector, Rajkot and another reported in 1992(2) GLH, 424, has held as under:

"In view of the aforesaid legal position the question which is required to be examined and answered is-is the exercise of power genuine ? Is it reasonable ? There is nothing on record to show that simply because the power is exercised after a period of about three years, the exercise of power has become unreasonable. Mere lapse of time, without anything more, would not make the excessive of power unreasonable. Therefore, the argument that there was inordinate delay in issuing show cause notice and therefore, the Government could not have exercised powers cannot be accepted. "

10. The Urban Land (Ceiling and Regulation) Act, 1976 is under a protective umbrella of Article 31B of the Constitution of India and it has been placed in IXth Schedule to the Constitution at serial no.132. As such, the purpose of the Act should not be defeated merely on the ground that the powers exercised under Section 34 of the Act have been exercised after inordinate delay. Delay depends upon different facts and circumstances of each case.

11. The learned Assistant Government Pleader submitted that the prescribed authority sends the papers to the Government for consideration about Revision and those papers were placed before the Review Committee. Whether the facts and circumstances are such so as to exercise powers under Section 34 of the Act should be invoked suo motu. It is possible that there may be a delay in placing papers before the Review Committee and the Review Committee after considering the facts and circumstances of the case, recommends to the Government to take further proceedings under Section 34 of the Act. Thousands of cases are received by the Government from Prescribed Authority of different cities. They are considered, then they are sent to Review Committee which again considers carefully and if it comes to the conclusion that prescribed Authority has taken erroneous view in not declaring excess land then it recommends to the Government for the exercise of powers under Section 34 of the Act. this process is not a stereotype process and it is not a single case for which the whole process can be taken within a few months. In reply to the above submission of the learned AGP, the learned counsel for the petitioner submitted that ratio has been laid down in the guideline no.4 in the case of M/s. Kavita Benefits Pvt.Ltd. (Supra) wherein the maximum time has been fixed 15 to 18 months for exercising that power under Section 34 of the Act. As such, the exercise of the Revisional power depends upon facts and circumstances of each case and it would be for the authority to decide as to whether exercise of revisional power can be said to be within reasonable period ? While exercising such powers, a number of factors can enter into consideration. We should not lose sight of socialistic pattern of society adopted by the Constitution, object and reasons of the Act. The object of the Act is, inter alia (i) to prevent concentration of urban property in the hands of a few persons and speculation and profiteering therein (ii) to bring about socialisation of urban land in urban agglomeration to subserve the common good by ensuring its equitable distribution (iii) to discourage construction of luxurious housing leading to conspicuous consumption

of scare building material and to ensure the equitable utilisation of such materials (iv) to secure orderly urbanisation. In case the time limit which is not prescribed by the legislature for declaring the excess land by correct orders of the Government exercising the powers under Section 34 of the Act, is provided by courts, the very object of the Act would be frustrated and defeated. Considering the intention of the legislature in not prescribing time limit, heavy responsibility and burden of the Government in processing for exercise of the powers under Section 34 of the Act, object and reasons of the Act, socialistic pattern of society adopted by the Constitution and the view taken by the Division Bench of this Court in the case of Haresh Kanti Lal Vora (supra), I am of the opinion that mere delay in exercising the powers cannot be a sole ground for brushing aside the powers of the Government exercised under Section 34 of the Act.

9. The second submission of the learned counsel for the petiioner is that after the order passed by the competent authority, several transactions have taken place and the parties have entered into agreements and sale deeds and the properties have been sold away to other persons. The "affected persons" in the proviso to Section 34 are required to be given reasonable opportunity of being heard in the matter.

10. I have carefully considered the arguments raised by the learned counsel for the petitioner. The affected persons include owner or holder of the property. If the property has been transferred to any other person,he or she shall be included in the word "affected person". The interpretation of reasonable opportunity of being heard means notice to be issued to him and he should be afforded a reasonable opportunity of leading evidence and of hearing and the authority is also required to consider after giving proper weightage of evidence and arguments to decide the matter in dispute in accordance with law. In the present case, the property shown at item no.4 is stated to have been sold by a registered sale deed dated 26.5.76 to Maganbhai and Keshabhai after obtaining the requisite permission. It is also stated that this land is an agricultural land as it appears from the order dated 21.4.76 passed by the Additional Collector, Surat and in case this property is agricultural land, it cannot be said to be vacant land under the provisions of Section 2(q) of the Act. The vacant land is defined under Section 2(q) of the Act Vacant land means not being land mainly used for purpose of agriculture in an urban agglomeration. If the land is

used for agricultural purpose, it is not a vacant land under the provisions of Section 2(q) which is defined in Explanation to section 2(O) of the Act. The Government has not considered whether it is an agricultural land being not vacant land under the provisions of Section 2(q) of the Act or it does not fall within the meaning of agricultural land in the Explanation to Section 2(O) or it has been converted into non-agicultural land and it has been sold to some other persons. If it has been sold and transferred to some other person, rights of the persons holding that property would be affected. From the order of the Government, it does not appear that the notices were issued to the transferees being affected persons. Thus, regarding property of survey no. 69/2, the order of the Government is not sustainable.

10. The third point raised by the learned counsel for the petitioner is that the property shown as item nos. 1 and 2 in Surat city is a constructed building and used for commercial purpose which cannot be said to be vacant land under Section 2(q)(ii) of the Act. It has not been touched by the authority below regarding this property whether area is wholly constructed or any part of that area is constructed and the remaining land is left out as open land as there is no clear evidence on record in respect thereof.

11. In view of Section 2(q)(ii), the constructed area is not held as vacant land at all. By Section 2(g), the Legislature has provided land appurtenant to the maximum limit of 500 sq.mtrs. and 500 sq.mtrs.as additional open land in accordance with the provisions of building operation. In case constructed area is 4000 sq.mtrs. the maximum land appurtenant land will be provided to the extent of 500 sq.mtrs. In case, constructed area is admeasuring 500 sq.mtrs., according to the provisions of building regulations, 25% of the constructed area is required to be left out as open land and 25% as additional open land. None of the authorities has considered the factual aspect regarding constructed area and appurtenant land under the provisions of Section 2(q)(ii) and 2(g)(i)(ii) of the Act regarding property shown at item nos.1 and 2.

12. So far as the property of village Piplod survey no.84 admeasuring 2428 sq.mtrs is concerned, according to petitioner, this property was also sold to S.M.Hotels Pvt. Ltd. and J.S.M. Hotels Pvt.Ltd. It is also stated that JSM Hotels Pvt.Ltd. has sold the property to respondent nos. 2 and 3 and they are also affected persons but no notice has been issued to the

respondent nos. 2 and 3 regarding ceiling proceedings in respect of Piplod property as part of this land has already taken by Surat Municipal Corporation under Town Planning Scheme no.6, Piplod.

13. As affected persons have not been issued any notice nor have they been given any opportunity of leading their evidence as the Government has passed the orders without giving an opportunity of hearing. On this ground, the order of the Government is also not sustainable.

14. On the whole, the order under challenge is not sustainable in the eye of law and in the interest of justice, the affected persons should have been given an opportunity of hearing so that bonafide purchasers or their defence can be considered so required under the proviso to Section 34 of the Act.

11. Accordingly, the petition is allowed and the order dated 6.6.1992 passed by the Joint Secretary, Government of Gujarat is hereby quashed and set aside. In the facts and circumstances of the case, it would be just and proper to remand the matter to the State Government with a direction to give reasonable opportunity of hearing to the affected persons by issuing a show cause notice and giving them an opportunity of leading evidence in respect of their rights and claims. after considering the evidence on record,the State Government would pass an appropriate order in the light of above observations, in accordance with law as expeditiously as possible preferably within a period of four months from the date of the production of a certified copy of this judgment. Rule is made absolute accordingly with no order as to costs.

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